APPENDIX A

AIDE MÉMOIRE

Several US States - inter alia Florida, California and Washington State - have enacted special legislation in the context of unrecovered insurance policies dating from the World War II period. These pieces of legislation require insurance companies doing business in the States concerned to provide comprehensive information on individual insurance policies under the threat of severe penalties, including the suspension of the companies' business license. Considering the clearly extraterritorial scope of these laws, their enforcement against insurance companies headquartered in Switzerland can be considered a violation of international law and Swiss sovereignty, which is liable to result in conflicting requirements imposed on the companies concerned to the extent that full compliance with the special State legislation would most likely imply a violation of applicable Swiss penal and data protection laws.

The Swiss Government is concerned about this situation and the renewed threat of sanctions and administrative harassment in a number of US States against European insurance companies, including Swiss companies. It considers that such threats or the actual use of sanctions, on the basis of potentially discriminatory and otherwise legally contestable State legislations, is in contradiction with the spirit of cooperation that the Swiss and US governments have reaffirmed at Davos and could strain the bilateral relations between Switzerland and the United States. Moreover, such threats or sanctions are completely unjustified as well as counter-productive in the light of the Swiss Settlement Agreement as well as the cooperative attitude of the Swiss insurance companies concerned.

The Swiss Government holds the view that this issue needs to be promptly addressed by the U.S. Government.

APPENDIX B

EMBASSY OF SWITZERLAND

The Embassy of Switzerland presents its compliments to the United States Department of State and has the honor of requesting its assistance in relation to the case of Winterthur International America Insurance Company, et al. v. Chuck Quackenbush, Insurance Commissioner for the State of California (Case No. CIV. S-00-779 [JFM]), in which the California Holocaust Victim Insurance Relief Act (the "California HVIRA") is being challenged by several insurers that do business in the State of California.

The California HVIRA purports to impose obligations on Swiss and other foreign companies "related" to U.S. companies, notwithstanding the fact that those companies are not engaged in business in California or indeed in the United States. It is the understanding of the Government of Switzerland that if the related Swiss companies do not comply with the directives of the California Insurance Commissioner under the HVIRA, their U.S. affiliated companies could be sanctioned and lose their licenses to conduct business in California.

Because of the extraterritorial scope of this legislation and the absence of a genuine connection between the issues involved and U.S. jurisdiction, its enforcement against insurance companies headquartered in Switzerland would violate international law and Swiss sovereignty. Furthermore, such enforcement would result in the imposition of conflicting requirements on the companies concerned to the extent that compliance with the California legislation would require a violation of the applicable Swiss penal and data protection

laws. The Government of Switzerland is concerned about potential attempts to interfere with the Swiss legal system.

The Government of Switzerland is also concerned that enforcement of this legislation would interfere with the Class Action Settlement Agreement reached in In Re Holocaust Victim Assets Litigation ("Swiss Settlement"). The Swiss Settlement by its terms provides for complete legal and material resolution of Holocaust-related issues for all of Switzerland, with the exception of three Swiss insurers which are involved in separate lawsuits. The California HVIRA conflicts with the Swiss Settlement's release of all other Swiss insurance companies and therefore is inconsistent with United States and Swiss government policies supporting the Settlement.

In addition, the issues referred to in the California HVIRA have been specifically addressed in the framework of the Joint Economic Commission ("JEC") recently established by our governments. A Joint Statement issued on the occasion of the inaugural meeting of the JEC specifically "welcom[ed] the settlement that was achieved in In Re Holocaust Victim Assets Litigation . . . which . . . , when approved will be recognized by all interested parties as complete legal and material resolution of Holocaust related issues for all of the Swiss economy [including the banking, insurance and manufacturing sectors] . . . and for the Swiss government." The JEC "further welcom[ed] the ongoing constructive discussions in the framework of the International Commission on Holocaust Era Insurance Claims ("Eagleburger Commission") on unpaid policies of European insurance companies dating from [the World War II] period, as an appropriate forum for resolving Holocaust related issues for those three Swiss insurance companies not [released] by the Swiss settlement." The JEC stated that it would "address issues related to potentially disruptive and counterproductive effects of investigative initiatives or the threat or actual use of sanctions on a sub-federal level against insurers, including

those that are part of the Swiss settlement or that are participants in the Eagleburger Commission."

In the Action Plan annexed to the Joint Statement, the U.S. Government pledged to "call on the U.S. State insurance Commissioners and State legislative bodies to refrain from taking unwarranted investigative initiatives or from threatening or actually using sanctions against Swiss insurers."

The Government of Switzerland has on several recent occasions expressed concern to the U.S. Government about State actions related to Holocaust insurance issues. Most recently, on April 6, 2000, the Government of Switzerland presented to the U.S. Government an Aide-Mémoire requesting prompt attention to this issue and expressing concern that such laws as the California HVIRA violate Swiss sovereignty and international law and may cause involved Swiss insurance companies to violate Swiss laws. The Government of Switzerland further objected to laws such as the California HVIRA on the grounds that they are potentially discriminatory against Swiss financial industries and a potential cause of strain on relations between the two countries. The Aide-Mémoire pointed out that laws such as the California HVIRA are counter-productive in light of the efforts and cooperative attitude of Swiss insurance companies in this matter.

Consistent with our understanding of the Department of State's policy of encouraging foreign governments to communicate directly with the United States Courts, the Government of Switzerland attempted to submit its views on this matter in a letter dated June 2, 2000 to the federal district court in which the case is being heard. The Embassy of Switzerland has learned, however, that on July 31, 2000, the court stated that it would not accept submission of the letter for procedural reasons. The Embassy therefore requests that the Department of State forward a copy of this note to the court on its behalf.

The Government of Switzerland is informed that a preliminary decision of the district court imposing a preliminary injunction against enforcement of the California HVIRA is currently pending before the Court of Appeals for the Ninth Circuit. The Government of Switzerland hereby requests that the United States Government make a submssion to the Court of Appeals, re-affirming the position of the Joint Economic Commission that the International Commission on Holocaust Era Insurance Claims is the appropriate forum for resolving remaining pertinent issues and that State authorities should refrain from taking unwarranted investigative initiatives or from threatening or imposing sanctions against Swiss insurers that would be liable to cause serious, irreparable damage to the companies concerned.

The Embassy of Switzerland avails itself of this opportunity to thank the United States Department of State for its cooperation and to renew the assurances of its highest consideration.

Washington, D.C., August 9, 2000

United States Department of State
Washington, D.C.

JEC PLENARY SESSION
SATURDAY – JANUARY 25, 2003 - DAVOS

A. During Secretary Thompson's Participation

1. Bioterrorism Cooperation: Completing U.S.-Swiss industry initiative for promoting worldwide industry "biosafety" measures to safeguard labs and pathogens from terrorist access;

(ENCOURAGING CONTINUED ENGAGEMENT OF U.S. AND SWISS PHARMACEUTICAL INDUSTRIES TO COMPLETE A BIOSAFETY CODE TO FIGHT BIOTERRORIST ACCESS TO LABS)

2. FDA-Swissmedic Regulatory Cooperation: Cooperation between U.S. FDA and Swissmedic in Steps Toward a Mutual Recognition Agreement for Pharmaceutical and Medical Device Products:

(CURRENT STATE OF PLAY BETWEEN FDA AND SWISSMEDIC ON THEIR WORKPLAN. POLITICAL LEVEL SUPPORT FOR CURRENT PACE?)

B. Fighting Terrorism and International Economic Crime

1. Blocking Terrorist Financing / Freezing Terrorist Assets: Improving bilateral communication; projects for capacity building in developing financial centers;

(REPORT ON U.S.-SWISS COOPERATION TO DATE / WHAT'S NEXT IN FIGHT AGAINST TERRORIST FINANCING? POSSIBLE JOINT EFFORTS TOWARDS CAPACITY BUILDING FOR

BETTER FINANCIAL CENTER DUE DILIGENCE; SUPPORT FOR FATF PROCESS)

2. US Security Measures, including Container Security Initiative (CSI) and Impact on Int'l trade:
(CONSULTATIONS ON THE EFFECTS OF U.S. SECURITY MEASURES ON SWISS COMPANIES; IDENTIFICATION OF MEASURES THAT COULD INFLUENCE BILATERAL TRADE)

C. Corporate Governance Reforms, Including Sarbanes-Oxley Act

1. Impact of Corporate Oversight Measures: Consultation on Sarbanes-Oxley and Auditing Reforms' International Impact;
(CONSULTATIONS ON THE EFFECT OF U.S. REFORM MEASURES ON SWISS COMPANIES AND INT'L FIRMS BASED IN SWITZERLAND. DISCUSSION OF GOVERNMENT SCOPE FOR STRENGTHENING LEGAL OR SELF-REGULATORY STRUCTURES TO ENSURE BETTER CORPORATE GOVERNANCE.)

D. Cooperative Development Efforts in Southeast Europe and Central Asia

1. Southeast Europe Economic Stability: Report on progress in creating structures conducive to private investment;
(ASSESSMENT OF PROGRESS FOR STABILITY PACT AND OTHER ASSISTANCE EFFORTS BY BOTH SIDES)

2. **World Summit on Sustainable Development-WSSD:** Follow Up: Joint Development Outreach to Central Asia: Trade Capacity Building;
(LAUNCHING U.S.-SWISS PARTNERSHIP AS FOLLOW UP TO WSSD)

E. Bilateral and Multilateral Trade and Investment Issues

1. **Holocaust Assets:** Resolution of Insurance Claims;
(UPDATE ON CURRENT PROGRESS THROUGH EAGLEBURGER COMMISSION)

2. **WTO/Trade Issues:** Cooperation at Doha; including TRIPS issue for pharmaceuticals; steel
(REPORT ON OUR DOHA PRIORITIES AND FOLLOW UP)

3. **Trade in Livestock Products:** Resolving Disputes over U.S. beef entry to Swiss market and Swiss dried beef access to U.S.
(REPORT ON CURRENT DIALOGUE (ROAD MAP) TOWARDS RESOLVING IMPORT OF DRIED BEEF TO U.S. AND IMPORT OF U.S. BEEF TO SWITZERLAND)

4. **Thomas Bill:** Potential impact on foreign direct investment

5. **Telecommunication:** Provisioning of Leased Lines and Unbundling the Last Mile

(SWISS UPDATES ON TELECOM POLICY REFORMS)

F. Export Controls

1. Non-proliferation and Export Controls: Progress in strengthening Wassenaar, the CWC, and other instruments.

(EXCHANGE OF VIEWS ON ISSUES THAT NEED TO BE ADDRESSED TO IMPROVE COORDINATION OF REGIMES CONTROLLING EXPORTS OF ARMS AND DUAL-USE TECHNOLOGIES)

G. Science and Technology Cooperation

1. Science and Technology Framework Agreement (STFA): Promoting synergy between research and industry;

(MERITS OF A POSSIBLE U.S.-SWISS S&T FRAMEWORK AGREEMENT)